

On April 25, 2005 appellant, a 47-year-old mail extractor, filed an occupational disease claim alleging that on April 4, 2005 she first realized the tingling in her left arm and fingers was employment related. On the back of the form the employing establishment noted that she had

been detailed as part of a reasonable accommodation.¹ Appellant stopped work on April 5, 2005 and returned to work on April 8, 2005. The Office accepted the claim for elbow/forearm and shoulder/arm strain/sprain.

The Office received medical reports and duty status forms (Form CA-17) by Dr. Julius Cantu, a treating physician; rehabilitation treatment notes; and a May 22, 2005 report by Dr. Anand Joshi, a treating Board-certified physiatrist and pain specialist, detailing a pain evaluation for appellant's left shoulder and back.

Appellant submitted copies of an offer of light/limited duty and an amendment to an offer of limited duty/light duty from the employing establishment and reports from Dr. Cantu. The employing establishment noted that she had been released to light duty by Dr. Cantu as of April 27, 2005 with work restrictions. Based upon the May 3 and 12, 2005 reports by appellant's treating physician, the employing establishment offered her a light-duty job effective May 12, 2005 working four hours per day. The restrictions, which the employing establishment incorporated in the position, included four hours instead of seven hours of simple grasping and fine manipulation and no reaching above the shoulder. Appellant accepted the amended light-duty job offer on May 31, 2005. In the amended job offer, the employing establishment noted "the revised work restrictions submitted by your physician on May 26, 2005" due to her accepted employment injury.

In a June 6, 2005 attending physician's report, Dr. Cantu diagnosed left shoulder and elbow strain due to appellant's duties of sorting and opening mail on a daily basis. He indicated that appellant was totally disabled for the period May 26 through June 28, 2005 and had a partial disability for the period April 26 to May 25, 2005.

Appellant filed a claim for compensation (Form CA-7) for intermittent compensation for the period April 4 to July 2, 2005 and attached corresponding time analysis forms.

In a letter dated August 5, 2005, the Office informed appellant that her CA-7 forms, claiming compensation for the period April 4, 2005 and ongoing, had been received. It noted that she was requesting compensation for 67.70 hours for the period April 6 to May 25, 2006. Appellant was informed that the Office would pay her for 27 hours for the period April 26 to May 26, 2005. The Office noted that the record contained no medical evidence showing that she sought medical treatment. With respect to the compensation claimed, effective May 28, 2005, the Office informed appellant that, when a claimant is working in a limited-duty position and stops work this is considered a recurrence of injury. The Office allotted appellant 30 days to provide medical and factual information to support her recurrence claim.

Subsequent to the August 5, 2005 letter, appellant submitted progress notes and duty status reports by Dr. Cantu and physical therapy notes reporting on her progress.

By decision dated September 21, 2005, the Office denied appellant's claim for a recurrence of disability due to her accepted employment injury.

¹ The record indicates that appellant was granted her request for a reasonable accommodation in November 2004.

Subsequent to the Office's decision, appellant submitted additional wage-loss claims for intermittent wage loss with supporting time analysis forms for the period September 19 to November 25, 2005 and medical evidence.

In progress notes dated July 28 and August 17, 2005 by Dr. Cantu, appellant related that she continued to experience left shoulder pain. Dr. Cantu also diagnosed a rotator cuff tear based upon a May 27, 2005 magnetic resonance imaging (MRI) scan in the July 28, 2005 progress note. In the August 17, 2005 notes, he related that appellant remained off work "to avoid further aggravation of her work injuries." Under objective evidence, Dr. Cantu related:

"[Appellant] [p]resents with continue diminished [left upper extremity] muscle strength with increased pain to quick movements of [left upper extremity] especially reaching in front of her, overhead reaching and to resistance especially in ranges of abduction and flexion."

In a September 19, 2005 unsigned report by Dr. Scott W. Spann, a Board-certified orthopedic surgeon, and Dr. James Remkus, a Board-certified internist and diagnostic radiologist, reviewed the results of an MRI scan and options for treatment. The physicians diagnosed left shoulder joint pain, rotator cuff tear and subacromial impingement syndrome.

On October 3, 2005 appellant requested reconsideration and submitted evidence in support of her request. The evidence included a May 27, 2005 MRI scan, progress notes for the period May 11 to September 8, 2005 and an April 26, 2005 consultation report by Dr. Cantu and an April 8, 2005 report by Dr. Rita M. Schultz, a treating Board-certified family medicine practitioner. In his April 26, 2005 report, Dr. Cantu diagnosed left shoulder and elbow strain. A physical examination revealed "tenderness to even moderate palpation" of the left shoulder and elbow. In her April 8, 2005 report, Dr. Schultz diagnosed a left shoulder injury due to repetitive motion and requested modification of appellant's job duties to reduce use of her left shoulder and arm.

In the various progress notes, Dr. Cantu diagnosed various conditions including left shoulder strain, left elbow strain and rotator cuff tear as seen by a May 27, 2005 MRI scan.

By decision dated December 28, 2005, the Office denied appellant's request for modification.²

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish

² The Board notes that, following the December 28, 2005 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. §§ 501.2(c); *Donald R. Gervasi*, 57 ECAB ____ (Docket No. 05-1622, issued December 21, 2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003). The Board also notes that appellant filed a request for reconsideration on February 8, 2006, however, since the Office has not rendered a final decision addressing her request, the Board, has no jurisdiction to consider it. See 20 C.F.R. § 501.2(c).

by the weight of the reliable, probative and substantial evidence a recurrence of total disability and that she cannot perform the light-duty position. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³

A recurrence of disability is defined under the Offices implementing federal regulations as the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴

ANALYSIS

The Office accepted appellant's claim for elbow/forearm and shoulder/arm strain/sprain. Appellant filed claims for compensation for the period April 6 to November 25, 2005. She stopped work on the date of the injury and returned to full-duty work on April 8, 2005. Appellant filed a claim for compensation for 67.70 hours for the period. However, the Office authorized payment for 27 hours for the period April 26 to May 26, 2005 and found that appellant was not entitled to payment for the remaining 40.70 hours due to the lack of supporting medical evidence. Subsequently, she was offered a light-duty position with restrictions including working four hours per day and no reaching above the shoulder, which she accepted. The Office informed her that with respect to the compensation claimed effective May 28, 2005 this was considered a recurrence of disability.

In support of her claim, appellant submitted progress notes and duty status reports and reports from Dr. Cantu. Dr. Cantu first examined her on April 26, 2005 and diagnosed left shoulder and arm strain. In a June 6, 2005 attending physician's report, he diagnosed left shoulder and elbow strain due to her duties of sorting and opening mail on a daily basis. He concluded that appellant was totally disabled for the period May 26 through June 28, 2005. Dr. Cantu, in progress notes dated July 28 and August 17, 2005, reported that she continued to have shoulder pain. In the July 28, 2005 report, he diagnosed a rotator cuff tear. In the August 17, 2005 progress notes, Dr. Cantu indicated that appellant was to remain off work to prevent further aggravation. He provides no explanation or medical rationale explaining why she was totally disabled for the period May 26 through June 28, 2005. Dr. Cantu does not discuss appellant's job duties or explain how the employment-related condition had changed such that she could not continue the limited-duty job which was based on restrictions he set. In a July 28, 2005 report, Dr. Cantu diagnosed a right rotator cuff tear, which the Office has not accepted as employment related. As to placing appellant off work to prevent further aggravation of her condition, the Board has held that fear of future injury is not compensable under the Federal Employees' Compensation Act.⁵ For the reasons set forth above, Dr. Cantu's reports are insufficient to establish that her accepted conditions caused disability for the period claimed.

³ *Bryant F. Blackmon*, 57 ECAB ____ (Docket No. 04-564, issued September 23, 2005); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ 20 C.F.R. 10.5(x).

⁵ See *Mary Geary*, 43 ECAB 300 (1991); *Gaetan F. Valenza*, 39 ECAB 1349 (1988).

An unsigned September 19, 2005 report by Dr. Spann and Dr. Remkus which diagnosed left shoulder joint pain, rotator cuff tear and subacromial impingement syndrome is of no probative value as the authors cannot readily be identified as physicians.⁶ An April 8, 2005 report by Dr. Schultz which diagnosed a left shoulder injury due to repetitive motion and the May 27, 2005 MRI scan results did not provide any opinion as to whether appellant was capable of performing the light-duty position. Similarly, Dr. Schultz provided no opinion as to whether appellant was disabled from working beyond requesting modification of her usual work duties. Thus, these reports are insufficient to her claim for a recurrence of disability.

The Board finds that appellant has not submitted the necessary detailed medical opinion evidence complete with objective physical findings to support a change in the nature and extent of her injury-related condition or to support the period of disability claimed.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence of disability due to her accepted employment injury or is entitled to compensation for the period April 6 to November 25, 2005.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 28, 2005 is affirmed.

Issued: January 23, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁶ See *Merton J. Sills*, 39 ECAB 572 (1988).